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IN THE

Supreme Court of the United States

October Term, 1941.

No. 447. 67

WADE GARRETT,

Petitioner,

v.

MOORE-McCORMACK LINES, INC., and
AMERICAN SCANTIC LINE,

Respondent.

Respondent's Brief in Opposition to Writ of Certiorari

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RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI.

SUMMARY OF ARGUMENT.

I. Petitioner for Certiorari Does Not Fully State the Facts in Regard to the Extent of the Injury and the Circumstances Surrounding the Release.

II. The Quantum and Nature of Evidence Necessary to Take to a Jury the Question of the Validity of a Release Is a Matter of Procedure and Governed by the Law of the Forum.

III. Even if the Question of What Constitutes a Jury Question on the Validity of a Release Were a Matter of Substantive Law, in an Action Brought in a State Court the Common Law Rule and Not the Admiralty Rule Would Apply.

IV. The Petitioner Is Bound by the Rules of Procedure and the Limitations of Jurisdiction of the Forum Which He Has Selected.

ARGUMENT.

I. Petitioner for Certiorari Does Not Fully State the Facts in Regard to the Extent of the Injury and the Circumstances Surrounding the Release.

The following facts are omitted by Petitioner in his statement of the case but are set forth in the opinion of the Supreme Court of Pennsylvania, *Garrett v. Moore-McCormack Co., Inc.*, 344 Pa. 69, 1942 A. M. C. 282:

1. Petitioner was taken ashore and treated at Gdynia, Poland, not because of the accident of which he complained but because of a broken jaw suffered in a brawl in Copenhagen subsequent to the alleged accident. Page 72 of Pa. report; page 284 of A. M. C.

2. The alleged injuries to his back and spine were in fact incurred in another accident. For the same back and spine injuries he had pending a suit against the Southern Steamship Company at the time of the trial of the case at bar. Page 74 of Pa. report; page 285 of A. M. C.

3. Upon return of Petitioner to the United States, all money advanced by Respondent to him was in settlement of the claim for injuries. Respondent contended that no wages were owing. An itemized voucher for all wages payable up to February 8th had been signed by Petitioner at Gdynia. Page 73 of Pa. report; page 284 of A. M. C.

4. The circumstances surrounding the execution of the release were such that Petitioner entered into it without pressure from Respondent and with full knowledge and understanding of his act. Page 73 of Pa. report; page 285 of A. M. C.

II. The Quantum and Nature of Evidence Necessary to Take to a Jury the Question of the Validity of a Release Is a Matter of Procedure and Governed by the Law of the Forum.

It was recently held by Judge Goodrich in the case of *Boyle v. Ward*, 125 F. 2nd, 672, January 26th, 1942, that the question of sufficiency of evidence for a case properly to be submitted to a Jury is a question of procedure and therefore governed by the law of the forum. In that case suit was brought in the Federal Court for the Middle District of Pennsylvania to recover damages for injuries sustained in an automobile accident which occurred in New York. The case arose in the Federal Court on diversity of citizenship. It was complained that the Federal Court for the Middle District of Pennsylvania erred in not applying the New York rule with regard to the sufficiency of the facts to establish negligence. It was held that the Pennsylvania rule should be applied, because as classified by the law of Pennsylvania, the question was one of procedure.

In accord with this view are:

Fortein v. D. L. & W. Ry. Co., 90 N. J. L. 137, 100 A. 194;

Singer v. Messina, 312 Pa. 129, 167 A. 584;

Beale, Conflict of Laws (1935), Volume 3, page 1611;

Restatement, Conflict of Laws, Section 595, Comment a, page 710; comment b, page 711.

III. Even if the Question of What Constitutes a Jury Question on the Validity of a Release Were a Matter of Substantive Law, in an Action Brought in a State Court the Common Law Rule and Not the Admiralty Rule Would Apply.

Admiralty Jurisdiction is exclusive of State Courts. The Act of Congress, June 10, 1922, C. 216 Section 2; 42 Stat. 635; 28 U. S. C. A. Section 371 provides that

> "The jurisdiction vested in the Courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the Courts of the several States: . . .
>
> Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right to a common-law remedy where the common law is competent to give it . . . ."

The Moses Taylor v. Hammons, 4 Wall. 411, 18 L. Ed. 397 (1867), an opinion by Mr. Justice Field, held that a similar provision in an earlier Act of Congress making admiralty exclusively a federal jurisdiction was constitutional.

The action in the case at bar was brought in a State Court to enforce rights at law created by Section 33 of the Federal Statute known as the Jones Act, 41 Stat. 1007, 46 U. S. C. A., Section 688. Petitioner seeks to have such rights supplemented by the admiralty rule that a seaman is a ward of the admiralty and therefore releases signed by him must be established by the opposing party and especially scrutinized by the Court. In a State Court, however, only common law or statutory rules of law may be invoked. The Pennsylvania Supreme Court, therefore,

properly applied its common law rule that to bring before a Jury the question of a validity of a release, the evidence against it must be "clear, precise and indubitable."

IV. The Petitioner Is Bound by the Rules of Procedure and the Limitations of Jurisdiction of the Forum Which He Has Selected.

It was open to the Petitioner to have brought his suit in personam in admiralty to be heard by a judge sitting without a Jury, or in the law side of the United States District Court to be heard by a Judge sitting with a Jury, or in the State Court. Having selected the latter, he cannot now be heard to complain of the procedure and the jurisdictional limitations of his choice.

Respectfully submitted,

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